

WILDLAND FIRE PROTECTION IN MONTANA

BACKGROUND:

The position the State takes on wildland fire protection in Montana may be summarized as follows:

- (1) All agencies that are responsible for fire protection on public and private lands should be recognized by the Department of Natural Resources and Conservation (DNRC). This has been partially attained through the recognition of DNRC, the U.S. Forest Service, the Bureau of Land Management, counties signing cooperative agreements with DNRC, and the Bureau of Indian Affairs, Flathead Agency as protection agencies.
- (2) Wherever possible, forest fire protection districts or affidavit units should be established, offering the most intensive form of protection to the landowner.
- (3) In a forest fire district, one and only one agency should protect all lands within the established boundaries of the district.
- (4) Within the affidavit unit, the designated protection agency should protect all lands administered by the agency plus those Federal, State, and private lands that are voluntarily assigned.
- (5) In other protection types, efforts should be given in the support of the local forces such as the county unit.

Due to the large acreage of public lands in Montana and the various public agencies involved, it is imperative that these agencies cooperate to the fullest extent in protecting these lands at the least cost to the taxpayer. In addition, the privately owned lands are intermingled throughout the public ownership, creating some unique protection problems. On the federal lands, the governing agency is responsible for fire protection, while all state and private lands are the responsibility of the Division of Forestry as authorized by state law. To protect all these lands in an efficient manner, cooperative agreements have been signed between recognized federal fire protection agencies and the state. Such agreements give general guidelines for the protection of all lands to the mutual advantage of the protection agencies entering into the agreement. At the present time, there exists cooperative agreements between the State and the USFS, the State and the BLM, and the State and the BIA, Flathead Agency. A new Master Cooperative Agreement is being drawn up for signature at this time that will be between the State and the USFS, BLM, BIA, NPS, and the U.S. Fish & Wildlife Service. The USFS, BLM, and BIA, Flathead Agency are the only three federal agencies recognized by the State under Montana Codes Annotated (MCA) 76-13-102(14), though the U.S. F&WS may ask to be recognized in the future. A "Recognized Agency" is an agency organized for the purpose of providing forest fire protection and recognized by the department (DNRC) as giving adequate fire protection to forest lands in accordance with rules adopted by the department.

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HISTORY:

One of the first forest fire protection districts was established near Kalispell, Montana in 1911. The Northern Montana Forestry Association (NMFA) was formed to provide protection to this district. The Association was funded by members being assessed an acreage payment for protection of the more than 2½ million acres in Flathead and Sanders counties. Federal funds were made available to each state under the Weeks Law beginning in 1911 for the fire protection program on state and private forested lands. One-half of the money distributed by the states was allotted under the Weeks Law, and the other one-half allocated from state and private funds. The State Forester began assisting the NMFA in 1916. The federal government assisted by employing and supervising 21 patrolmen in 1918. The NMFA provided protection to these lands from 1911 to 1970 when the state assumed the protection duties.

In 1921 another district was formed near Missoula, Montana and the second privately operated forest fire protection association was established. This association was known as the Blackfoot Forest Protective Association (BFPA) and was organized to provide protection on more than 1,200,000 acres of private and state forest lands. The BFPA turned over their protection duties to the state in 1971

In 1922 the first district directly protected by the state was established near Bigfork, Montana for approximately 50,000 acres of state and private lands.

In 1924, the Clarke-McNary Law was passed, and the federal partnership with the states in fire control on state and private forest lands changed from the Weeks Law program to the Clarke-McNary Section 2 program. Under CM-2, the federal program cost share was made available directly to the State Forester, who was responsible for the direct supervision of the fire program covering state and private lands. The CM-2 partnership has assisted in advancing organized protection to over 8½ million acres of forested lands from 1924 to 1977. In 1977 the CM-2 Act was replaced with the Resources Planning Act (RPA). The partnership continues under this act.

The Montana Legislature established State Forests in 1925, totaling 490,000 acres. The state assumed protection of the Stillwater State Forest District in 1928, the Swan River State Fire Protection District on the Swan River State Forest in 1956, the State Continental Divide District in 1965, the Avon District in 1975, and the Helena District in 1977.

A third privately operated forest fire protection association was formed in 1956 to provide protection to 90,000 acres of privately owned forest and watershed land in the Anaconda area. The Anaconda Forest Protective Association functioned from 1956 until 1966 when the state assumed the protection duties.

State statutes were changed in 1963 to require an affirmative vote of 75% of the landowners representing 51% of the forest land within an area to create a new forest fire protection district. In 1967, this statute was changed to reduce the affirmative vote to 51% of the owners representing 51% of the forest land.

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FEDERAL INVOLVEMENT:

Up until 1965, the U.S. Forest Service had been providing fire protection to state and private lands within 5 districts in Western Montana and to some 1½ million acres of state and private forest lands that were outside the National Forest and district boundaries in Eastern and Central Montana. The state reimbursed the Forest Service for protection of the lands within the districts, while individual contracts at approximately .02¢ per acre were negotiated by the Forest Service with landowners outside the boundaries in Eastern Montana. In 1965, the USFS revised its National Forest protection boundaries to generally coincide with National Forest administrative boundaries and filed these new boundary maps with the state. This withdrawal was made for several reasons, among which were: (1) the Forest Service was charged with redeeming its basic charter of protecting and managing National Forest lands; (2) the Forest Service wished to reduce the Tort Claim liability of protecting large acreage of non-Federal lands outside its boundaries; and (3) the President had decreed that all Federal agencies decrease work done for others. Coupled with these 3 reasons, was the fact that the .02¢ per acre income under the individual contracts did not cover the Forest Service expenses for suppression or administration.

Following the Forest Service withdrawal in 1965, the state continued efforts to provide adequate levels of protection to the state and private forest lands outside of existing fire districts. This was carried forward through the formation of new districts, the formation of affidavit units, and the creation of the state-county cooperative fire program.

STATE/COUNTY COOP FIRE PROGRAM:

In 1967, the first state-county cooperative fire protection agreement was entered into by the State with Meagher county. This enabled the state to provide organizational and planning assistance, equipment, and training to the county. The county in turn protected all the state and private forest lands within the county that were not under the protection of a recognized fire protection agency. All fifty-six counties now participate in this program. Five new forest fire districts have been established by the vote of landowners and eight new affidavit units are operating at the present time. The Division of Forestry protection responsibilities have expanded from 50,000 acres at Bigfork in 1922 to 5 million acres of direct protection and over 45 million acres of coop support today.

RCFP PROGRAM:

In 1972, Title IV of the Rural Development Act authorized and directed the Secretary of Agriculture to provide financial, technical, and other assistance to State Foresters or other appropriate officials to organize, train, and equip fire departments in rural areas and communities under 10,000 population to prevent and suppress fires. This Act, commonly known as the Rural Community Fire Protection Program (RCFP), broadened out the partnership of the Federal Government with the state into protection of non-forest resources as well as forest resources. The state has distributed some \$1,135,500 to all fifty-six counties since the beginning of the program.

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FOREST ASSESSMENT PROGRAM:

House Bill No. 68, Chapter 397, Montana Session Laws of 1977, enacted by the Forty-fifth Legislature of the State of Montana, approved by the Governor of the state, became effective on July 1, 1977. This act brought about some major changes in the Laws of Montana relating to forestry. The forest fire assessment system was simplified by combining all Class I and Class II forest lands into one class, and establishing a minimum fee of \$6 per owner per year in each protection district. It provides for the protection of rangelands and other resources by the state through a contract with the landowner. The responsibility and authority of the counties was expanded in providing protection for forest and farm resources. A county that has not entered into a cooperative or other written agreement, however, with the state for fire protection must reimburse the Division for state fire suppression costs resulting from a fire emergency in that county. At the present time the assessment rates are set at \$0.17 per acre with a \$22 minimum. The Division of Forestry must set rates at a level that raises no more than one-third of its budget from assessments, the other two-thirds is to come from the State general fund and federal funds. As the per acre cost comes mainly from the large landowners, such as the large forest products companies, and the minimum is raised mainly from the small landowner with less than 20 acres, it is desirable to have these funds collected approximately 50/50 from each group.

Summary: Over 50.3 million acres of forest and non-forest state and private lands are protected by the state through a series of protection systems. These systems include forest fire districts, affidavit units and cooperative fire control counties. Actual protection is afforded by the state, either through its own organization, or in support of county forces, or through contracts with the Forest Service, Bureau of Land Management, and the Flathead Indian Agency

METHODS OF FIRE PROTECTION:

The Department of Natural Resources and Conservation mission has been the protection of the natural resources of the State from wildfire. DNRC's primary mission is protection of those State and private classified forest lands lying within our protection boundaries. Large tracts of federal lands, within protection boundaries, are also being protected through contract or offset. Although "forest fire protection" has been our primary responsibility for several years, this responsibility has been re-defined to a broader one of "wildland fire protection". Wildland fire protection is a more inclusive term for both forest and range lands and more closely defines our role as a natural resources fire protection agency. Our current program direction is to take suppression actions that are both offensive and defensive on farm, range, forest, watershed, or other uncultivated lands in private and public ownership. DNRC accomplishes its mission of protecting these private and public lands through a combination of three primary methods. These methods are labeled as direct, contract, and State/County cooperative fire protection. These methods are described below.

1. Direct Protection: This type of protection is handled directly by DNRC. Prevention, pre-suppression and suppression work is all considered DNRC direct fire protection responsibility. DNRC hires personnel and purchases equipment necessary to fulfill

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wildland fire protection responsibilities for assigned lands. Assigned lands are within established wildland fire protection districts or units.

2. **Contract Protection:** This type of protection is provided to State and private owned lands by a federal agency which has been recognized by the the department (DNRC), with the Land Board as final board of appeals. Recognized federal fire protection agencies are required to provide protection at the same or higher level as they do on their own lands. Contracting is accomplished either by the offset (the State provides fire protection on an approximately equal area of federal land) method or by direct payment to the federal agency for their services.

3. **State-County Cooperative Protection:** The State and county cooperative fire program is a lower intensity fire protection than that of direct or contract protection but fully meets the legal requirements for protecting natural resources. The county provides the basic level of fire protection through a system of volunteers, county personnel, rural fire districts, etc. The county may be supported by the State in matters of organization, planning, prevention, equipment, training, and fire suppression.

Two primary wildland fire protection systems are utilized to provide for the protection of state and private lands whether these lands are protected by the state or a contracted agency. These two systems are known as “Forest Fire Districts” and “Affidavit Protection Units”.

1) **Forest Fire Districts** - A Forest Fire District is an area authorized and established under 76-13-204 MCA, by the Montana Department of Natural Resources and Conservation for the protection of classified forest land from fire. Protection within a District is the most intensive form of forest fire protection provided within the state. District boundaries are established through a vote of the landowners. The protection for the state and private lands within the district is assigned by the Department of Natural Resources and Conservation (DNRC) to a recognized protection agency. All classified forest lands, whether state, private, or federal, within the district boundaries are normally under the protection of one recognized agency. Payment for protection is made by the private landowners through annual assessments which are charged up to the maximum as provided by law, based upon actual costs of protection. Payment for protection of another agencies lands within a district are handled on a direct billing basis. Fire prevention, detection, and suppression services are provided through the state in all districts. Most of the National Forests or certain portions have been formed into protection districts. All of the lands lying within the boundaries of the following National Forests are in a district: Bitterroot, Flathead, Kootenai, and the Lolo. Portions of the following forests contain districts: Deer Lodge, Gallatin, and the Helena. The only other federal agency protecting lands within a district is the BIA on the Flathead reservation. The remainder of the districts within the state are being provided protection by the Division of Forestry. The total number of districts within the state is currently thirty-two.

2) **Affidavit Protection Units** - An Affidavit Unit is an area of forest land receiving fire protection authorized under , 76-13-201(2) MCA, by the Department of Natural

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Resources and Conservation. An affidavit is a sworn, notarized statement of the landowners inability to protect his own land from wildland fire and his willingness to pay for protection. No private lands in these units are protected without a signed affidavit. The state provides protection to those private lands within an affidavit unit under these signed forest fire protection affidavits. The protection of affidavit ownerships within the affidavit unit is assigned by the state to a recognized fire protection agency. Federal and state forest lands within the unit are protected by cooperative agreement between the state and agency involved. Protection costs for private lands are collected by the state through an annual assessment, charging up to the maximum as provided by law, based upon actual costs of protection. Forest landowners with signed affidavits receive the same degree of protection as those landowners receive within a forest fire district. The main disadvantage is that when fires occur in an affidavit unit the protection agency must determine whether the fire is on protected or unprotected land. If the land is unprotected, a determination must then be made as to whether the fire is or will threaten protected lands before action can be taken by the protection agency. Actions taken on fires that are not a direct threat, lessen the motivation for landowners to sign an affidavit or create a district.

The National Forests, or portions thereof, that have not been assigned as districts have been designated affidavit units. National Forests included are the following: Beaverhead, Custer, Deer Lodge, Gallatin, Helena, and the Lewis & Clark. The Bureau of Land Management has designated one area of the state as being an affidavit unit. This unit is located in the central part of the state north of the Missouri river and is called the C.M. Russell North Unit. The Department of Natural Resources and Conservation also has a number of units throughout the state. All state owned lands within these units are protected by cooperative agreement between the U.S. Forest Service or Bureau of Land Management and the Department of Natural Resources and Conservation. The total number of affidavit units in the state is eleven (11). Total protection for state and private lands within all affidavit units is 764,142 acres.

Both the "Forest Fire District" and the "Affidavit Protection Unit" protect forest lands. Intermingled with the forest lands within established districts and affidavit units are non-forested lands. These lands, formally considered unprotected, except for those public lands under the responsibility of a recognized protection agency, now receive the minimum protection under the State/County Coop Fire program. However, should a landowner desire a higher level of fire protection, there is an agreement available to these non-forest landowners for protection of their lands. An agreement must be signed by the individual landowners, similar to the affidavit for forest lands. A signed agreement is required before protection is provided to lands which lie within a forest fire district or affidavit unit. The option to sign up non-forest lands belongs to the landowner. The payment rate for protection of these lands is negotiated between the protection agency and the landowner, but usually equals the rate for protection of forest lands within the same affidavit unit or protection district.

The Bureau of Indian Affairs provides protection to those lands under their jurisdiction which lie within established Indian reservation boundaries. One reservation, the Flathead, as previously mentioned, has been formed into a district and is recognized by the Department of Natural

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Resources and Conservation to provide fire protection to all state and private forest lands within the reservation. State and private lands in all other reservations receive fire protection from the individual owner, the county through the State/County Coop Fire program, or from rural fire districts formed by the county. The state is not aware of any contracts between private landowners and the BIA for protection.

The Bureau of Land Management administers large acreages of public lands scattered throughout the state and provides fire protection to these lands. The major portion of this land is in the eastern part of the state with the exception of two large blocks of ownership located in the west-central and south-west sections of the state. Certain areas of BLM ownership are designated Grazing Districts but only one area in the state is a designated a fire affidavit unit. This unit is known as the C.M. Russell North and is in central Montana. Private lands may be protected by the BLM through the affidavit program in this area. At present, the U.S. Fish and Wildlife Service is seeking to be "recognized" as the protection agency in a portion of this area.

Self-Protection by Landowners: Self-protection is authorized under section 76-13-201 MCA. As stated by law, this protection shall be in conformity with reasonable rules and standards for adequate fire protection adopted by the Department of Natural Resources and Conservation. This means that the landowner is required to furnish proof of adequate protection to the Department. This type of protection is rarely adequate except in isolated cases. Costs for assistance by the state during a fire emergency in a county without a cooperative agreement must be reimbursed to the state as directed by law. Some private lands may be receiving protection through rural fire districts, although these districts are formed mainly to provide structural fire protection. Most protection provided by the individual landowner is minimal in many cases. Non-forested state owned lands in unprotected areas are provided some form of fire protection by the lessee.

The distinction between natural areas and structural developments has been well defined in the past. However, these differences have become more vague with the encroachment of structural developments into what was exclusively forest or wildland areas. This mixture of wildlands and developments has become quite extensive throughout the State and has been labeled the "Wildland/Urban Interface (WUI)". This rapidly expanding area has created significant fire management problems for all agencies with natural resource fire protection responsibilities.

Structural/Improvements Fire Suppression: Montana law also states that DNRC **may** protect non-forest lands and **improvements** when requested by the landowner. DNRC has elected to provide protection to non-forest lands, when requested by the landowner, through the use of non-forest agreements. We have not elected to provide the same level of protection to improvements.⁵ DNRC Fire Management interprets improvements to include structures and related high value items as defined within NFPA 1500-10.

³ MCA 76-11-102. **Cooperative agreements with owners and lessees of land for fire protection and conservation.** (1) For the purpose of more adequately promoting and facilitating the cooperation, financial and otherwise, between the state and all of the public and private agencies or individuals therein, the department of natural resources and conservation may cooperate with owners or lessees of farm, range, forest, watershed, or other uncultivated lands in private and public ownership for the protection from fire of the cultivated agricultural

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crops or natural resources existing or growing thereon and also in the conservation and perpetuation of such lands and resources, including the prevention of soil erosion and the regulation of stream flow.

⁴ **MCA 76-13-105. Protection of nonforest lands and improvements.** Non-forest lands and improvements may be protected by the department when requested by the landowner at rates determined by the department.

⁵ **NFPA 1500-10 (1-5) Definitions: Structural Fire Fighting.** The activities of rescue, fire suppression, and property conservation involving buildings, enclosed structures, vehicles, vessels, aircraft, or like properties that are involved in a fire or emergency situation.

DNRC's suppression actions on structures will be defensive in nature and thus be confined to the exterior of structures.

Local fire service agencies have the basic responsibility of both offensive and defensive structural fire fighting. Not all structures located within the State are covered by a local fire service. Many wildland areas, within the Department's direct protection responsibility, contain structures that are not covered by a structural fire service. DNRC may hire qualified structural firefighting services to provide protection for the duration of the wildfire threat.

DNRC limits actions on structural fires to:

1. Protecting or saving of **human life**. We shall only attempt the protection of human life when such suppression activities will not jeopardize the lives of our firefighters. We will **not** enter the interior of any burning structure and may only conduct defensive structural suppression actions.
2. Containing the fire to the structure involved. Our actions are confined to the **exterior** of the structure only. We will **NOT** undertake offensive interior suppression actions. Our primary focus will be to prevent the fire from spreading to nearby wildlands.

Guideline Restrict or confine the fire to the structure by spraying the exterior with water or foam.

We will maintain an awareness of the unseen highly hazardous materials contained within structures that may explode violently or produce toxic fumes and/or smoke that may cause serious injury.

⁶ **NFPA 1500-13 (1-5) Definitions.** Offensive operations: Actions that involve a direct attack on a fire, to directly control and extinguish the fire, often performed in the **interior** of involved structures. Defensive operations: Actions that are intended to control a fire by limiting its spread to a defined area, avoiding the commitment of personnel and equipment to dangerous areas. Defensive operations are generally performed from the exterior of structures and are based on a determination that the risk to personnel exceeds the potential benefits of offensive actions.

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We will conduct defensive suppression actions involving structures only to the extent it can be performed safely.

3. Defending a structure from an approaching wildfire prior to its ignition. We will ensure lives are not placed in danger in defense of a structure.

Guideline Defend a structure from destruction, from the outside (exterior), utilizing various tactics. Tactics may include spraying water or foam on the structure, burning out from existing or established control lines, and clearing fuels/materials from around the structure to make a "defensible space".

We will use tactics within the capabilities of our wildland firefighting personnel and equipment. At **NO** time will we put our personnel or other personnel in danger while defending a structure.

The incident commander may make the decision to sacrifice wildland acres in the defense of improvements.

Guideline Base decision on value comparison of wildland and improvements. Safety of firefighters and equipment. Impact our actions will have on overall wildland suppression strategy.

The following standards and guidelines are designed to clarify and explain the role of the Department of Natural Resources and Conservation fire management program in the Wildland/Urban Interface area as well as in other areas where structures may be involved.

(1) Definitions, from Chapter 1 of the "Forest Management Standards and Guidelines":

Performance standard: A specific level of performance required to satisfy policy. That level of performance may be either a desired product or simply a procedure. Neither the Unit nor the Area have the authority to choose to violate a performance standard. Only the State Forester or his designated representative can make that choice. Instances may arise where there are apparent conflicts between performance standards. Once again, those conflicts will be resolved by the State Forester or his designated representative.

Guideline: The recommended activities that should lead to the satisfaction of performance standards. There is discretion at the Unit or Area level in applying guidelines. A Unit or Area may choose to conduct activities that conflict with the guidelines provided here, but the activities must produce a result that meets performance standards. The Unit or Area must also document a justification for substantially deviating from recommended guidelines.

Future Federal Involvement in Wildland/Urban Interface Areas: Through the "*Federal Wildland Fire Management Policy & Program Review*", the U.S. Departments of Interior and Agriculture have issued an implementation plan for responding to the concerns raised after the South Canyon Fire incident in 1994, when several firefighters lost their lives, and the Shepard Mountain Fire in 1996, where 34 homes were lost in an area with undocumented structural protection. The main conclusion to draw from this report is that the federal agencies will continue to fight fire on private ground, as they have in the past, though they will require that any areas of private land

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they continue to protect that contain structures intermixed with wildlands, must have a structural fire protection agency in place within some prescribed timetable. The federal fire agencies stress that they are not equipped or trained to fight structure fires, and that this is the responsibility of the State or local governmental agencies. If, within a prescribed timetable, this structural component is not in place, the federal agencies will turn the wildland protection back over to the State or the local agency with jurisdiction. The point seems to be clear, where there are structures intermixed with wildland, a structural fire agency needs to be in place. A lot of people who live in areas like this are probably not aware that they don't have actual fire protection on their homes, or if they are aware of it, they may not be concerned, feeling that it (a wildland fire threatening their home) just will not happen to them. Rather than treat this direction by the federal agencies as a negative, it would be better to accept it as a positive, at least in the sense that it should bring to every ones attention the fact that there are areas in Montana, and other states, where there is NO structure fire protection available. It is a local problem and needs to be dealt with at the local level. The federal fire agencies will continue to provide support in these areas, but they don't want continued confusion about who provides structural fire protection. In Montana, DNRC has made a lot of materials available to those who wish to help organize some form of structural fire protection. It will take all agencies, working together, to overcome the problems we now face, as well as those that are sure to crop up in the future.